रजिस्ट्री सं० डी० 221

REGISTERED NO. D. 221

भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY
भाग II—खण्ड 2
PART II—Section 2
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 25अ] नई दिल्ली, बुधवार, मई 24, 1972/ज्येष्ठ 3, 1894
No. 25A] NEW DELHI, WEDNESDAY, MAY 24, 1972/JYAISTHA 3, 1894

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation

LOK SABHA

The following Report of the Select Committee on the Bill to give effect to the Vienna Convention on Diplomatic Relations, 1961 and to provide for matters connected therewith was presented to Lok Sabha on the 24th May, 1972:—

COMPOSITION OF THE COMMITTEE

Shri B. R. Bhagat—*Chairman*

MEMBERS

2. Dr. Henry Austin
3. Shri R. D. Bhandare
4. Shri Tridib Chaudhuri
5. Shri Madhu Dandavate
6. Shri Murasoli Maran
7. Shri Nathuram Mirdha
8. Shri Samar Mukherjee
9. Shri B. S. Murthy
10. Shri H. N. Mukerjee
11. Shri H. M. Patel
12. Shri N. K. P. Salve
13. Shri S. A. Shamim
14. Shri Sant Bux Singh

15. Shri S. N. Singh
16. Shri Surendra Pal Singh
17. Sardar Swaran Singh
18. Shri Atal Bihari Vajpayee
19. Shri P. Venkatasubbaiah

LEGISLATIVE COUNSEL

Shri P. L. Gupta, *Additional Legislative Counsel, Ministry of Law and Justice.*

REPRESENTATIVES OF THE MINISTRY OF EXTERNAL AFFAIRS

1. Shri S. K. Banerjee, *Secretary (East).*
2. Shri Mahboob Ahmad, *Joint Secretary (Protocol).*
3. Shri Upendra Lal, *Deputy Chief of Protocol.*
4. Dr. S. P. Jagota, *Director (L & T).*
5. Shri D. A. Kamat, *Deputy Director.*
6. Shri K. K. Chopra, *Law Officer.*
7. Dr. (Mrs.) K. Thakore, *Assistant Legal Adviser.*

SECRETARIAT

Shri P. K. Patnaik—*Joint Secretary.*

Shri H. G. Paranjpe—*Deputy Secretary.*

REPORT OF THE SELECT COMMITTEE

I, the Chairman of the Select Committee to which the Bill* to give effect to the Vienna Convention on Diplomatic Relations (1961) and to provide for matters connected therewith was referred, having been authorised to submit the Report on their behalf, present their Report with the Bill, as amended by the Committee, annexed thereto.

2. The Bill was introduced in Lok Sabha on the 25th November, 1971. The motion for reference of the Bill to a Select Committee was moved by Shri H. N. Mukerjee on the 20th December, 1971 and was discussed and adopted on the same day. Subsequently, a motion for raising the membership of the Select Committee from 15 to 19 was moved in Lok Sabha by Shri Surendra Pal Singh, Deputy Minister in the Ministry of External Affairs on the 22nd December, 1971 which was adopted on the same day.

3. The Committee held ten sittings in all.

4. The first sitting of the Committee was held on the 24th December, 1971. The Committee at this sitting decided to take up clause-by-clause consideration of the Bill from the next round of sittings.

5. The Committee considered the Bill clause-by-clause at their second, third, sixth and seventh sittings held on the 28th and 29th January and 13th and 28th April, 1972.

6. The Report of the Committee was to be presented by the "last day of the first week of the next session" *i.e.* by the 18th March, 1972. The Committee were granted extension of time on the 18th March, 1972 upto the "last day of the current session" *i.e.* the Budget Session, 1972.

7. The Committee considered and adopted the Report on the 18th May, 1972.

8. The observations of the Committee with regard to the principal changes made in the Bill are detailed in the succeeding paragraphs.

9. *Clause* 4.—This clause seeks to enable the Government of India to withdraw any privileges and immunities conferred on the diplomatic mission of a foreign State or members thereof whenever it appears to the Government of India that the privileges and immunities accorded to the Indian Mission or members thereof in the territory of that State, being a party to the Vienna Convention, are less than those conferred by this Bill. This clause does not specifically cover case of a breach of the Vienna Convention on the part of such foreign State. In order to enable the Government of India to take retaliatory measures, whenever that country commits any breach of the Vienna Convention with regard to an Indian Mission or its members, the Committee feel that the Government should be vested with necessary powers to that effect. Clause 4 has been amended accordingly.

*Published in the Gazette of India, Extraordinary, Part II, Section 2, dated the 25th November, 1971.

The Committee noted that with regard to countries which are not parties to the Vienna Convention on Diplomatic Relations, 1961, but to which this Bill will apply by virtue of clause 3, similar reciprocal or retaliatory action could be taken by the Central Government by issuing an appropriate notification in the Official Gazette under that clause.

10. *Clause* 8.—The amendment made in this clause is of a drafting nature.

11. *Clause* 11.—The Committees on Subordinate Legislation of both Houses of Parliament have approved a revised model clause for the laying, before Parliament, of rules, etc. made by the Central Government under Central Acts. The amendments made in this clause are with a view to bringing this clause in conformity with the revised model clause approved by the above-mentioned Committees.

12. *Clause* 1 *and Enacting Formula.*—The amendments made therein are of a consequential nature.

13. The Committee recommend that the Bill, as ammended, be passed.

B. R. BHAGAT,
Chairman,
Select Committee.

NEW DELHI;
May 18, 1972
Vaisakha 28, 1894 (*Saka*).

BILL NO. 134-A OF 1971

THE DIPLOMATIC RELATIONS (VIENNA CONVENTION) BILL, 1971

[AS REPORTED BY THE SELECT COMMITTEE]

[*Words underlined or side-lined indicate the amendments suggested by the Committee; asterisks indicate omissions.*]

A

BILL

to give effect to the Vienna Convention on Diplomatic Relations, 1961 and to provide for matters connected therewith.

BE it enacted by Parliament in the Twenty-third Year of the Republic of India as follows:—

Short title and extent.

1. (*1*) This Act may be called the Diplomatic Relations (Vienna Convention) Act, 1972.

(*2*) It extends to the whole of India.

Application of Vienna Convention on Diplomatic Relations.

2. (*1*) Notwithstanding anything to the contrary contained in any other law, the provisions set out in the Schedule to this Act of the Vienna Convention on Diplomatic Relations, adopted by the United Nations Conference on Diplomatic Intercourse and Immunities on the 14th day of April, 1961, shall have the force of law in India.

(*2*) The Central Government may, from time to time, by notification in the Official Gazette, amend the Schedule in conformity with any amendments, duly made and adopted, of the provisions of the said Convention set out therein.

Application of certain privileges and immunities to diplomatic missions and their members pursuant to international agreement.

3. Where in pursuance of any agreement, convention or other instrument it is necessary to accord to any diplomatic mission and its members, the sending State of which is not a party to the Vienna Convention on Diplomatic Relations, 1961, or to any other special mission and its members, privileges and immunities in India similar to those contained in the provisions set out in the Schedule, the Central Government may, by notification in the Official Gazette, declare that the provisions set out in the Schedule shall, subject to such modifications, if any, as it may consider necessary or expedient for giving effect to the said agreement, convention or other instrument, apply *mutatis mutandis* to the diplomatic mission and its members, or to the other special mission and its members, as the case may be, and thereupon the said provisions shall apply accordingly, and notwithstanding anything to the contrary contained in any other law, shall in such application have the force of law in India.

Restrictions on privileges and immunities.

4. If it appears to the Central Government that a State which is a party to the Vienna Convention on Diplomatic Relations, 1961 is in breach of its obligations arising thereunder or, that the privileges and immunities accorded to an Indian Mission or members thereof in the territory of any State which is a party to the Vienna Convention on Diplomatic Relations, 1961, are less than those conferred by this Act on the diplomatic mission of that State or members thereof, the Central Government may, notwithstanding anything contained in this Act, by notification in the Official Gazette, withdraw such of the privileges and immunities so conferred from the diplomatic mission of that State or from members thereof as may appear to the Central Government to be proper.

Waiver.

5. For the purpose of article 32 of the Convention set out in the Schedule, a waiver by the head of the mission of any State or any person for the time being performing his functions shall be deemed to be a waiver by that State.

Restrictions on certain exemptions from customs duty, etc.

6. Nothing contained in article 36 of the Convention set out in the Schedule shall be construed to entitle a diplomatic mission or member thereof to import into India goods free of any duty of customs without any restrictions on their subsequent sale therein.

Privileges and immunities of citizens of India.

7. For the purpose of article 38 of the Convention set out in the Schedule, a citizen of India shall be entitled only to such additional privileges and immunities, other than those set out in that article, as are granted to him by the Central Government by notification in the Official Gazette.

Restrictions on entry into diplomatic premises.

8. No public servant or agent of the Central Government, a State Government or any public authority shall enter the premises of a diplomatic mission for the purpose of serving legal process, except with the consent of the head of the mission. Such consent may be obtained through the * * * Ministry of External Affairs of the Government of India.

Evidence.

9. If in any proceedings any question arises whether or not any person is entitled to any privilege or immunity under this Act, a certificate issued by or under the authority of the Secretary to the Government of

India in the Ministry of External Affairs stating any fact relating to that question shall be conclusive evidence of that fact.

Power to make rules.

10. The Central Government may make rules for carrying out the purposes of this Act.

Notifications issued and rules made under this Act to be laid before Parliament.

11. Every notification issued and every rule made under this Act shall be laid as soon as may be after it is issued or made before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or, as the case may be, in the rule, or both Houses agree that the notification or rule should not be issued or made, the notification or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule.

THE SCHEDULE

(*See* section 2)

PROVISIONS OF THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS, 1961— WHICH SHALL HAVE FORCE OF LAW

Article 1

For the purpose of the present Convention, the following expressions shall have the meaning hereunder assigned to them:

(*a*) the "head of the mission" is the person charged by the sending State with the duty of acting in that capacity;

(*b*) the "members of the mission" are the head of the mission and the members of the staff of the mission;

(*c*) the "members of the staff of the mission" are the members of the diplomatic staff, of the administrative and technical staff and of the service staff of the mission;

(*d*) the "members of the diplomatic staff" are the members of the staff of the mission having diplomatic rank;

(*e*) a "diplomatic agent" is the head of the mission or a member of the diplomatic staff of the mission;

(*f*) the "members of the administrative and technical staff" are the members of the staff of the mission employed in the administrative and technical service of the mission;

(*g*) the "members of the service staff" are the members of the staff of the mission in the domestic service of the mission;

(*h*) a "private servant" is a person who is in the domestic service of a member of the mission and who is not an employee of the sending State;

(*i*) the "premises of the mission" are the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purpose of the mission including the residence of the head of the mission.

Article 22

1. The premises of the mission shall be inviolable, the agents of the receiving State may not enter them except with the consent of the head of the mission.

2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.

Article 23

1. The sending State and the head of the mission shall be exempt from all national, regional or municipal dues and taxes in respect of the premises of the mission, whether owned or leased, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in this article shall not apply to such dues and taxes payable under the law of the receiving State by persons contracting with the sending State or the head of the mission.

Article 24

The archives and documents of the mission shall be inviolable at any time and wherever they may be.

Article 27

1. The receiving State shall permit and protect free communication on the part of the mission for all official purposes. In communicating with the Government and the other missions and consulates of the sending State, wherever situated, the mission may employ all appropriate means, including diplomatic couriers and messages in code or cipher. However, the mission may install and use a wireless transmitter only with the consent of the receiving State.

2. The official correspondence of the mission shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions.

3. The diplomatic bag shall not be opened or detained.

4. The packages constituting the diplomatic bag must bear visible external marks of their character and may contain only diplomatic documents or articles intended for official use.

5. The diplomatic courier, who shall be provided with an official document indicating his status and the number of packages constituting the diplomatic bag, shall be protected by the receiving State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

6. The sending State or the mission may designate diplomatic couriers *ad hoc*. In such cases the provisions of paragraph 5 of this article shall also apply, except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the diplomatic bag in his charge.

7. A diplomatic bag may be entrusted to the captain of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag but he shall not be considered to be a diplomatic courier. The mission may send one of its members to take possession of the diplomatic bag directly and freely from the captain of the aircraft.

Article 28

The fees and charges levied by the mission in the course of its official duties shall be exempt from all dues and taxes.

Article 29

The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity.

Article 30

1. The private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission.

2. His papers, correspondence and, except as provided in paragraph 3 of article 31, his property, shall likewise enjoy inviolability.

Article 31

1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:

(*a*) a real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;

(*b*) an action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;

(*c*) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.

2. A diplomatic agent is not obliged to give evidence as a witness.

3. No measures of execution may be taken in respect of a diplomatic agent except in the cases coming under sub-paragraphs (*a*), (*b*) and (*c*) of paragraph 1 of this article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.

4. The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State.

Article 32

1. The immunity from jurisdiction of diplomatic agents and of persons enjoying immunity under article 37 may be waived by the sending State.

2. Waiver must always be express.

3. The initiation of proceedings by a diplomatic agent or by a person enjoying immunity from jurisdiction under article 37 shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

4. Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in

respect of the execution of the judgment, for which a separate waiver shall be necessary.

Article 33

1. Subject to the provisions of paragraph 3 of this article, a diplomatic agent shall with respect to services rendered for the sending State be exempt from social security provisions which may be in force in the receiving State.

2. The exemption provided for in paragraph 1 of this article shall also apply to private servants who are in the sole employ of diplomatic agent, on condition:

(*a*) that they are not nationals of or permanently resident in the receiving State; and

(*b*) that they are covered by the social security provisions which may be in force in the sending State or a third State.

3. A diplomatic agent who employs persons to whom the exemption provided for in paragraph 2 of this article does not apply shall observe the obligations which the social security provisions of the receiving State impose upon employers.

4. The exemption provided for in paragraphs 1 and 2 of this article shall not preclude voluntary participation in the social security system of the receiving State provided that such participation is permitted by that State.

5. The provisions of this article shall not affect bilateral or multilateral agreements concerning social security concluded previously and shall not prevent the conclusion of such agreements in the future.

Article 34

A diplomatic agent shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

(*a*) indirect taxes of a kind which are normally incorporated in the price of goods or services;

(*b*) dues and taxes on private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;

(*c*) estate, succession or inheritance duties levied by the receiving State, subject to the provisions of paragraph 4 of article 39;

(*d*) dues and taxes on private income having its source in the receiving State and capital taxes on investments made in commercial undertakings in the receiving State;

(*e*) charges levied for specific services rendered;

(*f*) registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property, subject to the provisions of article 23.

Article 35

The receiving State shall exempt diplomatic agents from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

Article 36

1. The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on:

(*a*) articles for the official use of the mission;

(*b*) articles for the personal use of a diplomatic agent or members of his family forming part of his household, including articles intended for his establishment.

2. The personal baggage of a diplomatic agent shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving State. Such inspection shall be conducted only in the presence of the diplomatic agent or of his authorized representative.

Article 37

1. The members of the family of a diplomatic agent forming part of his household shall, if they are not nationals of the receiving State, enjoy the privileges and immunities specified in articles 29 to 36.

2. Members of the administrative and technical staff of the mission, together with members of their families forming part of their respective households, shall, if they are not nationals of or permanently resident in the receiving State, enjoy the privileges and immunities specified in articles 29 to 35, except that the immunity from civil and administrative jurisdiction of the receiving State specified in paragraph 1 of article 31 shall not extend to acts performed outside the course of their duties. They shall also enjoy the privileges specified in article 36, paragraph 1, in respect of articles imported at the time of first installation.

3. Members of the service staff of the mission who are not nationals of or permanently resident in the receiving State shall enjoy immunity in respect of acts performed in the course of their duties, exemption from dues and taxes on the emoluments they receive by reason of their employment and the exemption contained in article 33.

4. Private servants of members of the mission shall, if they are not nationals of or permanently resident in the receiving State, be exempt from dues and taxes on the emoluments they receive by reason of their employment. In other respects, they may enjoy privileges and immunities only to the extent admitted by the receiving State. However, the re-

ceiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

Article 38

1. Except in so far as additional privileges and immunities may be granted by the receiving State, a diplomatic agent who is a national of or permanently resident in that State shall enjoy only immunity from jurisdiction, and inviolability, in respect of official acts performed in the exercise of his functions.

2. Other members of the staff of the mission and private servants who are nationals of or permanently resident in the receiving State shall enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the missions.

Article 39

1. Every person entitled to privileges and immunities shall enjoy them from the moment he enters the territory of the receiving State on proceeding to take up his post or, if already in its territory, from the moment when his appointment is notified to the Ministry for Foreign Affairs or such other Ministry as may be agreed.

2. When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the country, or on expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict. However, with respect to acts performed by such a person in the exercise of his functions as a member of the mission, immunity shall continue to subsist.

3. In case of the death of a member of the mission, the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the country.

4. In the event of the death of a member of the mission not a national of or permanently resident in the receiving State or a member of his family forming part of his household, the receiving State shall permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in the country the export of which was prohibited at the time of his death. Estate, succession and inheritance duties shall not be levied on movable property the presence of which in the receiving State was due solely to the presence there of the deceased as a member of the mission or as a member of the family of a member of the mission.

Article 40

1. If a diplomatic agent passes through or is in the territory of a third State, which has granted him a passport/visa if such visa was necessary, while proceeding to take up or to return to his post, or when returning to his own country, the third State shall accord him inviolability and such

other immunities as may be required to ensure his transit or return. The same shall apply in the case of any members of his family enjoying privileges or immunities who are accompanying the diplomatic agent, or travelling separately to join him or to return to their country.

2. In circumstances similar to those specified in paragraph 1 of this article, third States shall not hinder the passage of members of the administrative and technical or service staff of a mission, and of members of their families, through their territories.

3. Third States shall accord to official correspondence and other official communications in transit, including messages in code or cipher, the same freedom and protection as is accorded by the receiving State. They shall accord to diplomatic couriers, who have been granted a passport/visa if such visa was necessary, and diplomatic bags in transit the same inviolability and protection as the receiving State is bound to accord.

4. The obligations of third States under paragraphs 1, 2 and 3 of this article shall also apply to the persons mentioned respectively in those paragraphs, and to official communications and diplomatic bags, whose presence in the territory of the third State is due to *force majeuro*.

S. L. SHAKDHER,
Secretary.

PRINTED BY THE GENERAL MANAGER, GOVERNMENT OF INDIA PRESS, MINTO ROAD, NEW DELHI AND PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI, 1972